



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JAN 20 2011

201115028

SET: EP: RA: T2

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Uniform List: 9100.00-00; 408A.00-00

**Legend:**

Decedent = \*\*\*\*\*  
Spouse = \*\*\*\*\*  
Trust T = \*\*\*\*\*  
IRA X = \*\*\*\*\*  
Company M = \*\*\*\*\*  
Amount 1 = \*\*\*\*\*  
Date 1 = \*\*\*\*\*  
Date 2 = \*\*\*\*\*  
Date 3 = \*\*\*\*\*  
Date 4 = \*\*\*\*\*  
Month = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to the \*\*\*\*\* , letter, as supplemented by correspondence dated, \*\*\*\*\* , \*\*\*\*\* and \*\*\*\*\* , in which your authorized representative, on your behalf, requests several rulings under section 408(d) of the Internal Revenue Code ("Code").

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The following facts and representations have been submitted under penalty of perjury in support of the rulings requested.

Decedent, whose date of birth was Date 1 died on Date 2, \*\*\*\*, having attained age 70 1/2. Decedent was survived by his wife, Spouse.

At his death, Decedent maintained an individual retirement account, IRA X. On Date 3, \*\*\*\*, Decedent and Spouse created Trust T. By means of a beneficiary designation Decedent and Spouse named Trust T as the beneficiary of his IRA X.

The Trust provides, in relevant part, that: (i) During Decedent's and Spouse's joint lifetimes, the Trustee will distribute the net income and the principal of the Trust as either of them may direct (section 2.1 of Trust); and; (ii) At the Decedent's death, the Trustee will continue to hold the assets of Decedent and Spouse held by the Trustee at the death of the Decedent in trust for the Spouse and the Trustee will distribute those assets as directed paragraph 2.1 of the Trust to the Spouse as if the Decedent and Spouse were both still living (section 2.3 of Trust).

On Date 4, \*\*\*\*, Spouse signed a distribution form with respect to Decedent's IRA X on which she indicated that Trust T was to receive a one-time only distribution of the full amount standing in IRA X. Spouse represents that this distribution from IRA X to Trust T was based on the advice of her financial expert. Spouse further represents that Company M presented various forms relating to IRA X and offered no explanation of these forms or options available to Spouse regarding the distribution of Amount 1.

In Month \*\*\*\* Spouse's certified public accountant prepared her tax filing for the 2008 year and explained the distribution from the Decedent's IRA and the tax implications incurred by the distribution to Spouse. Spouse represents that it was on this occasion that she became aware of the taxable consequences and the options that were originally available to her at the distribution of IRA X. This request for letter ruling soon followed.

Spouse represents that Amount 1 has not been used or expended in anyway since Date 4, \*\*\*\*.

Based on the facts and representations, you request the following rulings:

1. That IRA X does not constitute an "inherited IRA," within the meaning of Code section 408(d)(3)(C);
2. That Spouse will be treated, for purposes of section 408(d)(3) of the Code as the distributee of the distribution from IRA X;

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3. That pursuant to section 408(d)(3)(A) of the Code Spouse will be eligible to roll over Amount 1 (minus distributions required under section 401(a)(9) of the Code) distributed from IRA Z into an IRA set up and maintained in her name within sixty (60) days from the X date of the issuance of the requested ruling;
4. That pursuant to section 408(d)(3)(I) of the Code, pursuant to section 408(d)(3)(I) of the Code, the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to the distribution from IRA X of Amount 1, because the failure to waive such requirement would be against equity or good conscience.
5. That, pursuant to a favorable ruling, Amount 1, after it is rolled over to one or more IRAs maintained in the Spouse's name within 60 days of the date of this ruling, will not be included in income for 2008.

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(I) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of section 408(d)(3) of the Code do not apply to inherited IRAs.

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Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, in short, under circumstances that conform with the requirements of section 408(d)(3) of the Code, a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that paragraph (d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3) Section 401(a)(9) required minimum distributions.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

On April 17, 2002, Final Income Tax Regulations ("publications") were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust or an estate.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that, in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a



foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

With respect to the first, second and third ruling requests, the IRA X account balance remaining at Decedent A's death was payable to Trust T created under the terms of the beneficiary designation. In relevant part, the provisions of Trust T provide that certain amounts shall be payable to Spouse and that Spouse has the right to direct any and all Trust T amounts.

Furthermore, generally, if either a decedent's plan or IRA proceeds pass through a third party, e.g., an estate or trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over either the qualified plan or the IRA proceeds into his/her IRA.

However, in the present case, Decedent's interest in IRA X passed to his Trust T of which Spouse was the primary beneficiary with the right to direct any and all amounts from Trust T without restriction. As such, pursuant to the terms of Trust T, Spouse could have demanded, in writing, that the full IRA X balance be paid to her and the trustee(s) of said Trust T would have been obligated to comply with said demand. Under this set of circumstances, no third party could have prevented Spouse from rolling over, or transferring, by means of a trustee-to-trustee transfer, the full amount standing in IRA X into either an IRA set up and maintained in Spouse's name or another IRA set up and maintained in the name of Decedent.

Under this set of circumstances, the Service will not apply the general rule set forth above. Therefore, we conclude as follows with respect to your first three ruling requests:

First, that IRA X does not constitute an "inherited IRA," within the meaning of Code section 408(d)(3)(C);

Second, that Spouse will be treated, for purposes of section 408(d)(3) of the Code, as the distributee of the distribution from IRA X; and

Third, that Spouse is eligible, pursuant to section 408(d)(3) of the Code, to roll over IRA X into an IRA set up and maintained in her name within sixty (60) days from the date of the issuance of this ruling.

With respect to your fourth and fifth ruling request, as noted above, Amount 1 was not rolled into another IRA within 60 days of the date it was distributed from IRA X. However, the facts adduced in this case indicate that the distribution of Amount 1 from IRA X was the result of Spouse's reliance on the advice of her financial expert.

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Furthermore, it has been asserted that the forms which Spouse signed at the direction of her financial expert did not reflect her intent as her financial expert failed to explain the forms and the her financial expert failed to advise her of her options, as primary beneficiary of Trust T and holding the right to direct any and all amounts of Trust T, including Amount 1. Specifically, her financial expert failed to explain that she had the exclusive right to direct Amount 1 and therefore could rollover Amount 1 into her own IRA. Additionally, while making these financial decisions Spouse was significantly impacted by her husband's recent death and the attendant family issues. In short, the failure to accomplish a valid contribution of Amount 1 into another IRA was a result of Spouse's reliance on the advice of her financial expert and the trauma caused by her husband's recent death.

Therefore, based on the above facts, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the sixty (60) day rollover requirement with respect to the distribution of Amount 1 from IRA X. Thus, you are granted a period of sixty (60) days from the issuance of this ruling letter to accomplish the rollover of Amount 1 into either an IRA set up and maintained in the name of Spouse or an IRA set up and maintained in the name of Decedent. Provided all other requirements of section 408(d)(3) of the Code, are met with respect to such contributions, the amounts deposited into said IRA will be considered rollover contributions within the meaning of section 408(d)(3) of the Code, if done so within sixty (60) days of the issuance of this letter. If accomplished in the manner stated above the amounts deposited will not be considered income for 2008.

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact \*\*\*\*\*, Esquire (ID: \*\*\*\*\*) via phone (\*\*\*\*\*) or fax (\*\*\*\*\*). Please address all correspondence to \*\*\*\*\*.

201115028

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Sincerely yours,



\*\*\*\*\* , Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC:

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